

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 863 OF 2015

MR.RAJEN NARAYAN SIRASWAR AND
ANR.,

... Petitioners

Versus

THE BARDEZ TALUKA CO-OP HOUSE
MORTGAGE SOCIETY LTD.,THR. ITS
SECRETARY MR.VITHAL A.SAWANT AND 2
ORS.

... Respondent

Mr. A. D. Bhobe and Ms. S. Bhobe, Advocate for the Petitioners.
Mr. V. A. Lawande, Advocate for the Respondent no. 1.

Coram:- F. M. REIS, J.

Date:- 22nd November, 2016

ORAL ORDER

Heard Mr. A. D. Bhobe, learned Counsel appearing for the
Petitioners and Mr. V. A. Lawande, learned Counsel appearing
for the Respondent no. 1.

2. The challenge in the above Petition is to the Judgment dated
20.05.2015 passed in Co-operative Appeal no. 33/2007, whereby
a challenge to the Award passed by the learned Registrar filed by
the Petitioner came to be rejected.

3. Mr. A. D. Bhobe, learned Counsel appearing for the
Petitioners, has pointed out that the alleged claim of the
Respondents that a sum of Rs.9,65,000/- was sanctioned to the

Petitioners is totally contrary to the bye-laws of the Respondents and the sanctioning limit authorised in terms thereof. Learned Counsel further pointed out that there is material on record to suggest that the Petitioners had availed a loan of Rs.3,00,000/- and not a sum of Rs.9,65,000/- as claimed by the Respondents. Learned Counsel further pointed out that the documents relied upon by the Respondents to claim that a sum of Rs.9,65,000/- was sanctioned to the Petitioners are a nullity as, according to him, such documents are contrary to the bye-laws of the concerned Society. Learned Counsel further submits that the learned Tribunal whilst examining the contention of the guarantors, has taken a view that the sanctioned loan of Rs.9,65,000/- is a null transaction and, as such, according to the learned Counsel, the question of the Petitioners paying the said amount as claimed by the Respondents is unjustified. Learned Counsel as such pointed out that the impugned Order as well as the Award passed by the learned Registrar deserves to be modified and the amount payable by the Petitioners towards the loan be restricted to a sum of Rs.3,00,000/-.

4. On the other hand, Shri V. A. Lawande, learned Counsel appearing for the Respondent no. 1, has pointed out that the Petitioners have committed a breach of the directions issued by this Court by Order dated 31.08.2016 as well as 05.10.2016 wherein the Petitioners were directed to deposit a sum of

Rs.5,00,000/-. Learned Counsel further pointed out that as the Petitioners have defaulted in the payment of such amount, the question of examining the above Petition in extraordinary jurisdiction of this Court under Article 227 of the Constitution of India, would not at all be justified. Learned Counsel further pointed out that the Respondents have relied upon the statement of accounts as well as the withdrawals by the Petitioners to establish that in fact the said sum of Rs.9,65,000/- was availed by the Petitioners. Learned Counsel further pointed out that the learned Registrar as well as the Tribunal have rightly appreciated the material on record to come to the conclusion that the Petitioners are liable to pay the amount to the Respondents as directed in the Award. Learned Counsel as such pointed out that there is no jurisdictional error committed by the Tribunal whilst passing the impugned Award which would call for any interference of this Court.

5. I have duly considered the submissions of the learned Counsel and I have also gone through the records. The very fact that the directions issued by this Court in the said Orders dated 31.08.2016 and 05.10.2016 were not complied with would itself be a ground to reject the above Petition.

6. Be that as it may, I have also examined the matter based on the contentions raised by the learned Counsel appearing for the

Petitioners. On going through the Award passed by the authorities below, it has been clearly held therein that the Petitioners had in fact availed a loan of Rs.9,65,000/-. This aspect has been corroborated in the correspondence addressed by the Petitioner himself wherein he had admitted the receipt of a sum of Rs.8,65,000/- by letter dated 08.10.2001 and sought for a further sum of Rs.1,00,000/- to complete the work of the House/Building. This finding of fact arrived at by the learned Tribunal cannot be interfered under Article 227 of the Constitution of India unless there is no perversity in such finding. Considering that the findings have been rendered based on the documentary evidence on record, there is no perversity in such findings which would call for interference in the present Writ Petition.

7. Apart from that, it is well settled that even assuming that the transaction is voidable or void, the benefits which have accrued from such transactions, have to be returned to the party who has rendered such services. In the present case, as pointed out herein above, the Petitioners themselves have availed of the loan as admitted in the correspondence with the Respondents and, consequently, even assuming there is any irregularity in sanctioning such loan, it does not absolve the Respondents to pay the amount due and payable to the Respondents. In such

circumstances, the contentions of the learned Counsel appearing for the Petitioners that the amount of loan claimed by the Respondents far exceeds the loan sanctioned, does not in any way affect the right of the Respondents to claim the amount admittedly availed by the Petitioners.

8. In view of the above, I find that no case is made out for interference in the impugned Order under Article 227 of the Constitution of India.

9. Petition stands accordingly rejected.

F. M. REIS, J.

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